In the High Court of Judicature for Rajasthan

Jaipur Bench

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Cr. Misc. Petition No.1150/2000
M/s Northern Minerals Ltd & (3) Ors.
Versus State.

Date of Order ::: 01/10/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Manish Sharma for Mr. PK Sharma, for petitioners
Mr. Arun Sharma, Public Prosecutor for State.

Instant petition U/s 482 CrPC has been filed for quashing of proceedings in Cr.Case-227/95 initiated vide order dt.12/06/95 by Chief Judicial Magistrate, Jhunjhunu, taking cognizance of offence U/S 29(1)(a) of Insecticides Act 1968 (“**the Act**”) against petitioners.

Petitioner No.1 is a company engaged in manufacturing pesticides while petitioner No.2 is its Managing Director and No.3 & 4 are its Director.

Insecticide Inspector cum Agriculture Officer (Plant Conservation), Chirawa (Jhunjhunu) visited M/s Hariyali Seed Bhandar, Near Purani Tehsil Road, Chirawa (Dealer of petitioner-Co.) on 26/11/94 and took three samples measuring 100ml. each of “Dimethoate-30-EC (diadhan-30EC) bearing Batch No.810ISI/3903 having manufacturing month March, 1994 & expiry month August, 1995,

which was seized and sealed in compliance of provisions of S.22(5) & (6) of the Act. A sample was sent for analysis to State Pesticides Testing Laboratory Durgapura, Jaipur which vide report dt.25/01/95 showing active ingredient – 26.42% and it was opined that sample does not confirm to BIS specification No.3903-1989; so was considered to be misbranded in view of S.3(k) of the Act - a copy whereof alongwith show cause notice dt. 21/02/95 was sent by Insecticide Inspector to the Trader (M/s Hariyali Seed Bhandar, with an endorsement whereof to the petitioner-Co., and reminders dt.14/03/95 and 21/04/95, in response whereof, M/s Hariyali Seeds Bhandar sent reply on 13/03/95 while petitioner-Company on 10/03/95 – reference whereof has been made in para 13 of complaint whereby petitioner Company controverted report of State Pesticides Laboratory and intended to adduce evidence in contra-version of report dt.25/01/95, as provided U/s 24(3) of the Act. Despite intention shown by petitioners accused within 28 days of show cause notice, no steps were taken by Insecticide Inspector to get referee sample re-tested by Central Insecticide Laboratory. After written consent from competent authority U/s 31(1) of the Act vide letter

dt.19/05/95, complaint was filed on 12/06/95 against petitioners as well as other accused for offence U/s 29(1)(a) of the Act.

Learned Magistrate took cognizance on 13/06/95 and issued process against the accused including petitioners for 30/10/95; co-accused dealers were served and put appearance on 15/10/96. Thereafter matter continued awaiting service of summons and process issued against petitioners for one reason or the other and petitioners herein could not have served with summons upto 16/04/2001. Be that as it may, in the meantime, shelf life of the sample expired in October, 1995, itself and petitioners have approached this Court by instant petition on 11/12/2000 for quashing of proceedings initiated against them.

Counsel for petitioners submits that manufacturing Company and its Managing Director are arrayed as accused and can be held guilty under the Act only when complaint discloses as to how and in what manner the petitioner/Managing Director was in-charge of or responsible to the Company for conduct of its business, as provided U/s 33 of the Act whereas in instant case, complaint does not disclose that at the material

time, he was in-charge of and responsible to the Company for conduct of its business and merely because he was Managing Director or Director of the Company which will not necessary hold them liable; and in absence whereof, complaint was not legally sustainable and they cannot be held vicariously liable for commission of offence under the Act; as such in absence of necessary ingredients as provided in S.33 of the Act being disclosed in complaint in order to launch prosecution against Directors of Co., very cognizance taken is not sustainable and such proceedings, if allowed to continue against petitioners, will be nothing but abuse of process of law. In support, Counsel placed reliance upon decision of Apex Court in **Municipal Corporation of Delhi Vs. Ram Kishan (AIR 1983 SC 67)** and of this Court in **Bharat Insecticides Vs. State ((1997(1) WLC 690)**, taken note of **DB** of this Court in **M/s Cadila Health Care Ltd Vs. State (2007(1) RLR 389)**.

Counsel further submits that once the petitioners (accused) controverted report of State Pesticide Laboratory, yet sample was not sent to the Central Laboratory and by the time,

summons could be served upon them, shelf life of sample itself has expired, which has resulted in violating their statutory right to get the sample re-tested U/s 24(4) of the Act – in absence whereof, report of State Laboratory cannot be read as conclusive proof against them. In support, Counsel placed reliance upon series of decisions of Apex Court in **Municipal Corporation of Delhi Vs. Ram Kishan, ibid; State of Haryana Vs. Unique Farmaid (1999 (8) SCC 190=SCC(Cr) 1404) and of this Court in United Phosphorus Vs. State (2002(2) CrLR (Raj) 826) & Tikayat Kisan Vikas Vs. State (2005(2) CrLR (Raj.) 1456).**

Per contra, Public Prosecutor supported the order and submits that whatever objections raised herein are available for the petitioners to make at the stage of trial and as such the petition deserves to be dismissed.

I have considered contentions of both the parties and with their assistance, perused material on record. It has been alleged in complaint that pesticide sample taken by Insecticide Inspector on being tested by State Pesticide Laboratory was found to be misbranded

and the referee sample wasnever sent to the Central Insecticide Laboratory for analysis. In complaint at para 13, a reference has been made of the reply No.10868 dt.10/03/95 received from petitioner Company & reply dt.13/03/95 received from M/s Hariali Seeds Store (dealer) to the show cause notice but in list of enclosures to complaint, reply dt.10/03/95 of petitioner Co., does not find place.

Letter dt.13/03/95 sent by the Inspector to the petitioner-Company, referred to in para 13 of complaint, depicts that he has received reply No.10868 dt.10/03/95 of petitioner Company and vide letter dt.21/04/95, the Inspector has asked petitioner Company to furnish certain details of its Directors and manufacturers.

However, Counsel for petitioner has placed a xerox copy of reply No.10868 dt.10/03/95 (referred to in para 13) sent by petitioner-Company - on its bare perusal shows that in the said reply, objection was raised controverting the report dt. 25/01/95 of State Pesticide Laboratory within statutory period of 28 days as provided U/s 24(3) of the Act and contended to adduce evidence in contraversion of report of

State Laboratory, Durgapura but before it could be re-analysed by the Central Laboratory, shelf life of sample in question has expired and that being so, no opinion could have been expressed by Central Laboratory, as taken note of by this Court in course of narration of facts (supra).

In order to appreciate, it would be convenient to have a look at Section 33 of the Act - provisions whereof clearly spells out that every person who was in charge of or responsible to the Company for conduct of its business, as well as the Company shall be deemed to be guilty of offence alleged to have been committed by Company and that being so, S.33(2) further clarifies that it has to be proved that offence has been committed with a consent or connivance, which can be attributable to any neglect on the part of Director/Manager, Secretary or other person of Company, who can alone be prosecuted and punished.

Para 13 of complaint reads as under :

> **"13**- यह कि मैं नोरदन मिनरल्स लि0 के पत्र संख्या 10868 दिनांक 10-3-95 व हरियाली बीज भ्ण्डार चिडावा के पत्र सं0 2 दिनांक 13-3-95 से प्राप्त उत्तर की प्रतिलिपि साथ में संलग्न है पुन: नोरदन मिनरल्स लि0 को उनके पत्र का पत्रोत्तर इस कार्यालय के पत्र सं0 6629 दिनांक 13-3-95 को भेजा गया तथा

मैं0 नोरदन मिनरल्स को पुनः पत्र संख्या 137 दिनांक 21-4-95 को लिखा गया उत्तर नहीं भिजवाया गया पत्र की प्रतिलिपि साथ में संलग्न है"

No other averment has been made in complaint in except in para 13 (supra) which can be said to be related to the instant petitioner.

On a perusal of complaint, itself, there is no iota of allegation that petitioner No.2-4 were in-charge of or responsible to the Company for conduct of its business. It is settled that for criminal liability, penal action must be strictly construed and in criminal law, every role of vicarious liability should be spelled out in complaint, itself against persons sought to be made vicariously liable. There is no vicarious liability unless statute specifically provides for.

S.33 of the Act deals with offences by Companies but does not make all the Directors liable for commission of offence by Company merely because of their holding office of Directors or in other capacity. These questions have been examined by Apex Court in **State of**

Haryana Vs. Brijlal Mittal (AIR 1998 SC 2327) and by Co-ordinate Bench of this Court in **Bharat Insecticides Ltd vs. State (supra)** and in recent DB decision in **Cadila Health Care Ltd Vs. State (supra).**

In State of Haryana Vs. Brijlal Mittal (supra), Apex Court observed ad infra:

> "It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in-charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfills both the above requirements so as to make him liable. Conversely, without being a director a person can be in-charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business."

In **Cadila Health Care Ltd Vs. State**

(supra), after having taken note of all decisions rendered by Apex Court, while examining scope of S.34 of the Act, Division Bench finally observed:

> **"21.** The crucial test which has been laid down by the Hon'ble Supreme Court on the issue of Director being 'in charge of' & 'responsible to the company for the conduct of business of the company' as required under section 34 of the Act is that the Director is concerned with the day-to-day working of the company, or in other words, for over-all control of the day-to-day business of the company or firm which excludes Directors connected with policy of the company. The Director may not be in charge of business of the company or may be in charge of business of the company but not over all in charge or may be in charge of only some part of business and further test as regards averments/ allegations made in the complaint, the Supreme Court had laid down that words mentioned in the section are not the magic words but the substance of the allegations be read as a whole. "

In view of what has been observed (supra), very complaint filed against petitioner No.2-4 in instant petition is not sustainable as it lacks material particulars as provided in S.33 of the

Act.

As regards contentions with regard to expiry of shelf life of sample in question depriving them of their right U/s 24(4) of the Act, suffice is to say that in their reply while controverting report of State Laboratory within 28 days of receipt thereof and intending to adduce evidence in support of their defence, and referee sample was not sent for re-testing through Central Laboratory as provided U/s 24(4) of the Act, by the Insecticide Inspector could by the time summons could be served, shelf life whereof had expired. Certainly their statutory right to get the referee sample re-tested by Central Laboratory has been seriously infringed.

In **State of Hariana Vs. Unique Farmaid (supra)** Apex Court observed ad infra :

> **"11.** .. The procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has the right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from the Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint

> expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, the expiry date of the insecticide was already cover and sending of the sample to the Central Insecticides Laboratory at that late stage, would be of no consequence. This issue is no longer res integra. In **State of Punjab Vs. National Organic Chemical Industries Ltd (1996(11) SCC 613**), this Court in somewhat similar circumstances said that the procedure laid down under section 24 of the Act deprived the accused to have the sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost despatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him."

In the facts of instant case, petitioners herein have been deprived of their valuable right to get sample re-tested from Central Laboratory U/s 24 (4) of the Act. Hence once sample could not have been re-tested by Central Insecticide Laboratory - in absence whereof, State Laboratory report

cannot be considered as conclusive.

As regard petitioner No.1 (manufacturing Company), it can certainly be prosecuted and Section 33 has no application but since shelf life of pesticide has expired and despite State Pesticide Laboratory report being controverted, sample was not sent for re-analysis to the Central Laboratory – in absence whereof, report of State Laboratory cannot be read as conclusive evidence; as such, no purpose will be served even while prosecuting petitioner No.1 (Company), as well.

It is true that this Court would always be reluctant to consider such cases at initial stage of trial and inherent powers U/s 482, CrPC are to be exercised very sparingly in exceptional cases. However, objection raised herein goes to the root of prosecution and manifestly show that if criminal proceedings are allowed to continue then it would amount to abuse of process of law. In the facts of instant case, ibid, allowing the complaint to stand against petitioners will be nothing but an abuse of process of law.

Consequently, misc. petition is hereby allowed alongwith stay petition No.834/2000. Complaint & further proceedings as against petitioners initiated in Cr. Case -210/2000 (Old 227/95) pending before Judl. Magistrate, Chirawa are hereby quashed and set aside. Record be sent back forthwith to the court below.

(**Ajay Rastogi), J.**